

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joan M. Goodrich,
Appellant,

v.

Greeley County Board of Equalization,
Appellee, and

Shirley M. Goldfish,
Appellee.

Case No: 17R 0007

Decision and Order Vacating and Reversing
the Decision of the Greeley County
Board of Equalization

For the Appellant:

Heather L. Sikyta,
Sikyta Law Office

For the Appellees:

Greeley County Board of Equalization,
Michael A. Goldfish, Chairman,

Shirley M. Goldfish,
Pro se

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in the village of Scotia, Greeley County, Nebraska. The parcel is improved with a 936 square foot home and a tool shed. The legal description and property record card for the parcel are found at Exhibit 19.

II. PROCEDURAL HISTORY

Joan M. Goodrich, Greeley County Assessor (the County Assessor), determined that the assessed value of the Subject Property was \$56,915 for tax year 2017. Shirley M. Goldfish (the Taxpayer) protested this assessment to the Greeley County Board of Equalization (the County Board) and requested an assessed valuation of \$40,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$45,000.¹

¹ Ex 1.

The County Assessor appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 20, 2018, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits 1, 2, 3, 5, and 7 through 32. Exhibits 4 and 6 were admitted in the course of the hearing. The Commission took notice of the 2017 Reports and Opinions of the Property Tax Administrator for Greeley County, without objection.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption remains until there is competent evidence presented to the contrary.⁴

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal."⁷ The commission may also "take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge..." and may "utilize its experience, technical competence, and specialized

² See, Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Phelps Cty. Bd. of Equal v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

knowledge in the evaluation of the evidence presented to it.”⁸ The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

IV. VALUATION

A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁰

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹¹ “Actual value, market value, and fair market value mean exactly the same thing.”¹² Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹³ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁵

B. Summary of the Evidence

Three witnesses testified at the hearing: Joan M. Goodrich, Michael A. Goldfish, and Shirley M. Goldfish. Ms. Goodrich is the Greeley County Assessor, and she has served in that capacity since 2012. She has worked in various capacities related to the assessment of property in Greeley County since 1989. She has held the State Assessor’s Certificate since 1990, and also holds credentials as a Certified Residential Appraiser. Mr. Goldfish is a member of the County Board,

⁸ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

⁹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹¹ *Id.*

¹² *Omaha Country Club* at 180, 829.

¹³ Neb. Rev. Stat. §77-131 (Reissue 2018).

¹⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

¹⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

and he has served in that capacity for approximately twenty years, including all times material to this appeal. Mrs. Goldfish, the Taxpayer, was the owner of the Subject Property on the assessment date of January 1, 2017. She is also Mr. Goldfish's mother.

Ms. Goodrich testified that she valued the Subject Property using a sales comparison approach, which operates by taking properties sold during a specific two-year window prior to the assessment date and comparing them to other properties within the same tax jurisdiction using a Computer Assisted Mass Appraisal System (the CAMA System). Characteristics of properties are entered into the CAMA System, which indicates a value based on those characteristics. To calculate the specific valuation of the Subject Property, the County Assessor put information about the Subject Property into the CAMA System, after which the characteristics of the Subject Property were compared to other properties within the county. The County Assessor most recently conducted an internal inspection of the Subject Property in 2005; "drive by" inspections were conducted in 2009, 2013, and 2017. Based on these inspections, information provided by the Taxpayer, and the information provided by the CAMA System, the County Assessor determined the value of the Subject Property to be \$56,915 for tax year 2017: \$54,885 for the house, \$1,930 for the land, and \$100 for the tool shed.¹⁶

In support of this valuation, the County Assessor presented the property record cards of three similar properties from Scotia, all of fair quality and average condition, ranging in assessed value from \$59,785 to \$60,580.¹⁷ She also presented a list of sales from Scotia, Nebraska, ranging in total parcel sales price from \$20,000 to \$155,000.¹⁸ The County Assessor testified that all residences in Scotia were subject to an 8% increase in assessed value to comply with the statutory requirement that residential property be assessed at ninety-two to one hundred percent of actual value.¹⁹ This 8% increase applied only to the residences and garages, not to land or outbuildings. This change in valuation was supported by the Property Tax Administrator (the PTA) at the Commission's Statewide Equalization hearings in 2017. The PTA concluded that

¹⁶ Ex 19:1.

¹⁷ Exs 20-22.

¹⁸ Ex 15:1.

¹⁹ See Neb. Rev. Stat. §77-5023 (Reissue 2018). The 8% increase in valuation for the residence and garage represents the entire change in assessed value of the Subject Property from tax year 2016 to tax year 2017 (less a \$10 reduction in the assessed value of the tool shed).

once the 8% increase was applied, the valuations for Scotia met the statutory requirements and that the quality of assessment met generally accepted mass appraisal practices.²⁰

The County Assessor presented information on her valuation methodology for the Subject Property to the County Board in the course of the protest hearing. She testified that the County Board made its decision to reduce the valuation of the Subject Property based on “what they thought it would sell for.” She further testified that, in her opinion, the adjustment was not based on the facts and circumstances as presented to the County Board, failed to create a uniform assessment for Greeley County, and was arbitrary.

The Taxpayer testified that she sold the Subject Property in October 2017 for approximately \$45,000. She also testified that she put the Subject Property up for auction in 2008, but rejected a high bid of \$38,000. The Subject Property has had water in the basement three times since 2008, but the Taxpayer remedied this problem by adding dirt and window wells in approximately 2010. She has made no updates or improvements to the Subject Property since completing this maintenance. Although she did not believe she could sell the Subject Property for \$50,000 as of October 2017, no evidence was adduced to show that she was familiar with principles of mass appraisal or general property values in the market area. She testified that, after telling her real estate agent that she could not get \$50,000 for the Subject Property, she sold the Subject Property for \$45,000 within three weeks of listing it. She was motivated to sell, in part, because of health issues.

Mr. Goldfish testified that he was familiar with the Subject Property and provided information in support of a lower value to his fellow County Board members at the protest hearing. He stated that he participated in the protest proceeding and deliberation by the County Board, but he did not vote.²¹ He testified that he did not provide an exact opinion of value to the other members. He testified as to his belief that the other County Board members set the value of the Subject Property after considering the rejected bid from the 2008 auction, a recent increase in

²⁰ Reports & Opinions, 2017, Greeley County, pages 9-10. The Commission notes that Scotia was included with Greeley and Wolbach as Valuation Grouping 01, which the County Assessor testified had an overall 7% increase to residential improvements from tax year 2016 to tax year 2017.

²¹ The Commission has significant concern with the propriety of Mr. Goldfish, one of three County Board members, participating in any way in a protest proceeding involving the assessment of property that was owned by his own mother. This concern goes to the issue of whether the County Board decision was arbitrary or unreasonable.

valuation,²² and the time elapsed since the 2008 auction. He took issue with several of the sales used by the County Assessor in compiling the sales file, opining that the value of certain parcels was driven up by the presence of commercial outbuildings, which, in turn, artificially inflated the values assigned to the homes during the assessment process.

A bid at a public auction in 2008, nearly nine years prior to the assessment date, is not credible evidence of market value for tax year 2017. Furthermore, the necessity of the 8% increase in the value of residential buildings demonstrates that property in Scotia was generally undervalued prior to 2017. The manner in which the County Board calculated a value of \$45,000 based on the nine-year-old bid of \$38,000 remains unclear, despite the testimony of three separate witnesses who were present at the protest hearing. And although the Subject Property did ultimately sell for \$45,000, Nebraska courts have consistently held that the sale or purchase price of property is, “standing alone, not conclusive of the actual value of property for assessment purposes . . . Sale price is not synonymous with actual value or fair market value.”²³ Instead, “the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”²⁴ The County Assessor provided clear and convincing evidence that the original assessment was based on local sales, prevalent market conditions, and the specific characteristics of the Subject Property. Accordingly, we should reverse and vacate the decision of the County Board.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed.

VI. ORDER

²² Total assessed valuation of the Subject Property increased from \$31,380 in 2015 to \$52,860 in 2016. The Taxpayer did not protest this increase due to medical issues, and the Commission cannot obtain jurisdiction over the past tax year.

²³ *Forney v. Box Butte Cty. Bd. of Equal.*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

²⁴ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999).

IT IS ORDERED THAT:

1. The decision of the Greeley County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 1,930
<u>Improvements</u>	<u>\$54,985</u>
Total	\$56,915

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Greeley County Treasurer and the Greeley County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective for purposes of appeal on March 8, 2019.²⁵

Signed and Sealed: March 8, 2019

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner

²⁵ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.